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09/842,371	04/25/2001	Diane C. Breidenbach		6561

7590 12/23/2009  
Thomas A. O'Rourke  
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425 Broadhollow Road  
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EXAMINER
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NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

MAIL DATE	DELIVERY MODE
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12/23/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 11/20/09 have been fully considered but they are not persuasive. The examiner disagrees with the applicant's interpretation and argument of the Hanryon reference presented on page 18 of the paper filed. Hanryon is being utilized for its teaching of the roller ball applicator with a spring biasing means. Col. 2, line 30 et seq. of Hanryon clearly discussed the arrangement of the ball being urged by the spring to thereby seal the plug.
2. With respect to applicant's remark regarding the affidavit of commercial success, none of the exhibits shows only the claimed invention without any additional element or popular celebrity being attached therewith. Therefore, the nexus has not been established.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "spring means to be seated against said lip" on lines 16-17 of claim 55 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

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is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 55 and 57-61 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. While the original specification discusses the roller ball having a surface roughness depending on the consistency of the product to be dispensed, nowhere does it teaches the limitations in lines 19-21 of claim 55. Hence, they are also considered as new matter. Moreover, the limitation in line s 238-29 where the "contoured shape that changes from a convex surface to a concave

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surface" is also considered as new matter since it is not presented in the original specification. Furthermore, the "cantilevered rod" in line 2 of claim 57 is also considered as new matter since it is not presented in the original specification. The claims are being examined as best understood.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-27, 29, 40-49, 52-55 and 57-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,897,626 (hereinafter Bratby-Carey) in view of US Patent 2,663,891 (hereinafter Hanryon) and US Patent 6,276,856 (hereinafter Pieper) as set forth in the previous office action.

The facial product as claimed in claim 22 is taught in Pieper and can obviously be employ on a container of Bratby-Carey. As best understood, the limitations of claims 55 and 57-61 has been addressed above and in the previous office action.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tuan N Nguyen/  
Primary Examiner, Art Unit 3751

TN